

REMARKS

This Amendment and the following remarks are intended to fully respond to the Notice of Non-Compliant Amendment mailed December 31, 2008 and to the Final Office Action mailed July 29, 2008 (the Office Action). Claims 1-50 were pending. In the Office Action, the Examiner confirmed that Claims 11, 28-29 and 34-41 were withdrawn from further consideration pursuant to 37 C.F.R. 1.142(b). Although Applicants timely traversed the restriction (election) requirement in the reply filed on March 27, 2008, Examiner Swearingen did not find Applicants' traversal persuasive because of lack of evidence. Further in the Office Action, Claims 1-2, 4-10, 12-27, 30-33 and 42-50 were rejected under 35 U.S.C. § 102(b) as being anticipated by Desai, et al. (US 5,781,703) (hereinafter "Desai"). Claims 34-41 were rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

Reconsideration of the rejections and objections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested.

In this Amendment, claims 1, 10, 12, 21, 27, 30, 32, and 42-50 have been amended and claims 3-8 and 13-20 have been canceled. Therefore, claims 1-2, 9-10, 12, 21-27, 30-33, and 42-50 remain present for examination.

Election/Restrictions

The Examiner confirmed that Claims 11, 28-29 and 34-41 were withdrawn from further consideration pursuant to 37 C.F.R. 1.142(b). Although Applicants timely traversed the restriction (election) requirement in the reply filed on March 27, 2008, Examiner Swearingen did not find Applicants' traversal persuasive because of lack of evidence.

Claim Rejections – 35 U.S.C. § 102(b)

Claims 1-2, 4-10, 12-27, 30-33 and 42-50 were rejected under 35 U.S.C. § 102(b) as being anticipated by Desai, et al. (US 5,781,703). Applicants respectfully traverse this

rejection because Desai fails to teach all of the elements of independent claims 1, 12, 30, 32, and 42, as amended, and all claims depending therefrom.

As amended, claim 1 recites, *inter alia*:

in response to the received result of the RPC specified by the first response, measuring a time delay from the client's dispatch of the first request to the client's receipt of the first response from the server, wherein the time delay is a number of milliseconds between sending the first request and receiving the first response;

appending the time delay to a header of a second request from the client to the server; and

dispatching, from the client to the server, the second request with the header, the second request specifying an RPC different from the RPC in the first request.

Desai does not disclose at least the elements recited above. Generally, Desai discloses a monitoring system for collecting, at a server, performance data that is obtained from client computer systems (i.e., using one or more Intelligent Remote Agent (IRA) program(s)) within a network. Desai further discloses that the purpose of the IRA programs is to "avoid running a Data Server 14 on each managed computer system" (Desai, col. 7, lns. 2-4). To thereby avoid running a centralized data server, Desai deploys IRA program(s) to "receive commands instructing them to *collect performance data on the Agent's* [(i.e., the client's)] *associated computer system*." Desai, col. 2, lns. 7-9 (emphasis added). In response to receiving such commands, Desai discloses that an IRA program "initiates data collection operations *on its respective computer system* 12...." Desai, col. 4, lns. 8-9 (emphasis added). Notably, each of the IRA program(s) disclosed by Desai operate independent of and asynchronously from the server that may be in communication with the IRA program(s). See Desai, col. 6, lns. 51-53 ("[T]he Intelligent Remote Agent 18 executes asynchronously from the Proxy Controller 16 and the Data Server 14."). For example, if a network connection between a server and an

IRA program fails (e.g., during a network outage), the IRA program will continue to collect and try to send (to the server) the data it collects. See Desai, col. 5, lns. 32-37. Moreover, the data collected by the IRA programs(s) *does not include time delays of network requests and responses*.

Desai completely fails to disclose or provide support for the collection of any network data whatsoever. Instead, Desai discloses that IRA program(s) collect client processing data in order to determine, e.g., “[h]ow busy is the CPU” (Desai, col. 1, ln. 31) and “whether any processes ... are using an inordinate amount of CPU time, i.e., greater than some threshold value or percentage” (See Desai, col. 10, lns. 32-36 and col. 11, lns. 11-14). Desai therefore fails to disclose, teach, or suggest at least measuring a time delay ... wherein the time delay is a number of milliseconds between sending the first request and receiving the first response, as recited in claim 1, as amended. Desai additionally fails to disclose, teach, or suggest, *inter alia*, the steps of appending the time delay to a header of a second request and dispatching, from the client to the server, the second request with the header (along with the appended time delay) as also set forth in claim 1, as amended. Therefore, Applicants submit that Desai does not disclose at least the above recited elements and that independent claim 1 and dependent claims 2, 9, and 10 are not anticipated by Desai.

As amended, claim 12 recites, *inter alia*:

calculating a round trip network latency comprising a difference between the response received time for the first response and the request initiation time for the first request, the round trip network latency comprising a number of milliseconds between recording the request initiation time for the first request and recording the response received time for receiving the first response; and

sending a second request from the client to the server, the second request comprising performance data and an RPC different from the RPC specified by the first request, the performance data comprising the round trip network latency.

Applicants reiterate the arguments made above with respect to claim 1 and submit that Desai does not disclose at least the above recited elements of claim 12. Therefore, independent claim 12 and dependent claims 21-27 are not anticipated by Desai.

As amended, claim 30 recites, *inter alia*:

receiving, at the client, a first response from the first server corresponding to a result of the RPC specified by the first request;

in response to the received result of the RPC, recording, at the client, a response received time for the first response;

calculating a round trip network latency for the first request/response pair comprising a difference between the response received time for the first response and the request initiation time for the first request; and

sending a second request from the client to a second server, the second request comprising another RPC different from the RPC specified by the first request and performance data, and the performance data comprising the round trip network latency for the first request/response pair.

Applicants reiterate the arguments made above with respect to claim 1 and submit that Desai does not disclose at least the above recited elements of claim 30. Therefore, independent claim 30 and dependent claim 31 are not anticipated by Desai.

As amended, claim 32 recites, *inter alia*:

recording, at the client, a request initiation time for the first request;

receiving, at the client, a first response from the server corresponding to a result of the RPC specified by the first request;

in response to the received result of the RPC, recording, at the client, a response received time for the first response;

calculating a round trip network latency for the first request/response pair comprising a difference between the response received time for the first response and the request initiation time for the first request;

storing, at the client, performance data associated with the first request/response pair and a performance data storage time, the performance data comprising the round trip network latency for the first request/response pair;

sending a second request from the client to the server, said second request specifying another RPC different from the RPC specified by the first request; and

if, a difference between a request initiation time for the second request and the storage time for the performance data associated with the first request/response pair is less than a maximum performance data age threshold, incorporating the performance data associated with the first request/response pair into the second request.

Applicants reiterate the arguments made above with respect to claim 1 and submit that Desai does not disclose at least the above recited elements of claim 32. Therefore, independent claim 32 and dependent claim 33 are not anticipated by Desai.

As amended, claim 42 recites, *inter alia*:

a performance data remote procedure call (RPC) extension tag included in an RPC request for prefacing network performance data associated with a client, said performance data RPC extension tag comprising:

- a performance data format version field;
- at least one performance data format flag;
- a performance data size field; and
- an uncompressed performance data size field;

Applicants reiterate the arguments made above with respect to claim 1 and submit that Desai does not disclose at least the above recited elements of claim 42. Therefore, independent claim 42 and dependent claims 43-50 are not anticipated by Desai.

Claim Rejections – 35 U.S.C. § 101

Withdrawn claims 34-41 were previously rejected under 35 U.S.C. § 101 because the claimed invention was allegedly directed to non-statutory subject matter. The Applicant submits that rejection of claims 34-41 under 35 U.S.C. § 101 is now moot

because the claims were withdrawn from further consideration pursuant to 37 C.F.R. 1.142(b).

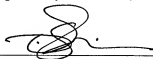
Conclusion

This Amendment fully responds to the Office Action mailed on July 29, 2008. Still, that Office Action may contain arguments and rejections that are not directly addressed by this Amendment due to the fact that they were rendered moot in light of the preceding arguments in favor of patentability. Hence, the failure of this Amendment to directly address an argument raised in the Office Action should not be taken as an indication that the Applicants believe the argument has merit. Furthermore, the claims of the present application may contain other elements, not discussed in this Amendment, which are not shown, taught, or otherwise suggested by the art of record. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability.

It is believed that no further fees are due with this Response. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, it is believed that claims 1-2, 9-10, 12, 21-27, 30-33, and 42-50 are now in condition for allowance, and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is respectfully requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,



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